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7 ATTORNEYS FOR PLAINTIFF
8 GREGORIO GARCIA-VALLE

9 UNITED STATES DISTRICT COURT
10 FOR THE CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

11 GREGORIO-GARCIA-VALLE,

USDC Case No. 5:17-cv-01027-MWF-AGR

12
13 Plaintiff,

PLAINTIFF GREGORIO GARCIA-
VALLE'S FIRST AMENDED
COMPLAINT FOR DAMAGES;
AND FOR DECLARATORY AND
INJUNCTIVE RELIEF

14
15 v.

DEMAND FOR JURY TRIAL

16 UNITED STATES OF AMERICA;
17 UNITED STATES DEPARTMENT OF
18 HOMELAND SECURITY, IMMIGRATION
19 AND CUSTOMS ENFORCEMENT;
20 THOMAS HOMAN, IN HIS OFFICIAL
21 CAPACITY, AS ACTING DIRECTOR OF
22 THE U. S. IMMIGRATION AND CUSTOMS
23 ENFORCEMENT; AND ELAINE C. DUKE,
24 IN HER OFFICIAL CAPACITY AS ACTING
25 SECRETARY OF HOMELAND SECURITY,
26 AND DOES 1-100, inclusive

27 Defendants.

1 Plaintiff Gregorio Garcia-Valle hereby files his First Amended Complaint and for
2 Declaratory and Injunctive Relief, as follows:

3
4 **PRELIMINARY STATEMENT**

5 1. Plaintiff Gregorio Garcia-Valle became a lawful permanent resident of the United
6 States in or about December 21, 1999.

7 2. On or about February 5, 2014, law enforcement officers of the U. S. Department
8 of Homeland Security, (DHS), United States Immigration and Customs Enforcement (ICE)
9 unlawfully arrested, detained, prosecuted, deported and prevented the return of Plaintiff, in
10 violation of an Automatic Stay of Removal pursuant to 8 C.F.R. § 1003.23(b)(4)(ii).

11 3. As a result of Defendants actions, Plaintiff suffered the direct results of illegal
12 imprisonment, unlawful arrest, detention, prosecution, wrongful deportation and illegal exclusion
13 from the United States until on or about May 8, 2014, when DHS/ICE officials finally admitted
14 that there was an Automatic Stay in place and that in fact that DHS/ICE had wrongfully arrested,
15 detained, prosecuted, deported and illegally refused to permit Plaintiff from re-entry.

16 4. Plaintiff continues to suffer ongoing, concrete harm to the stigmatization caused
17 by residual misleading and derogatory information concerning Plaintiff's lawful permanent
18 residency status that remains within the federal agency databases as a result of the wrongful
19 removal, deportation, and then detaining him even longer after permitting him to re-enter.

20 5. Without affirmative action by the Department of Homeland Security to search and
21 purge its' databases of all derogatory information suggesting that Plaintiff had been subject to
22 removal orders (which is false), Plaintiff will continue to suffer the tangible, adverse effects
23 ICE's unfounded and unlawful determination that Plaintiff was subject to a removal order
24 deported and prohibited from re-entry into the United States.

25 6. Accordingly, Plaintiff brings this action for damages under the Federal Tort
26 Claims Act ("FTCA") and for declaratory and injunctive relief pursuant to the Administrative
27 Procedure Act ("APA").

28 **JURISDICTION AND VENUE**

1 This Court has jurisdiction over the subject matter of Plaintiff's claims pursuant to
2 28 U.S.C. §§ 1331 (federal question) and 1346(b) (FTCA), and 5 U.S. C. §702 (Administrative
3 Procedure Act).

8. On or about February 5, 2016, Plaintiff timely submitted an Administrative Tort Claim to ICE and DHS, seeking damages as compensation for, *inter alia*, malicious prosecution, wrongful arrest, detention and deportation, and intentional and negligent infliction of emotional distress, by ICE law enforcement officials and their refusal to permit Plaintiff to re-enter the United States based on a non-existent removal order and when they deported him on or about February 6, 2014. Plaintiff's Administrative Tort Claim was timely because he submitted it less than two years after his claims arose on or about May 8, 2016, the date Plaintiff was finally permitted to re-enter the country and only after ICE/DHS discovered that in fact, Plaintiff should not have been removed nor deported. DHS and ICE denied Plaintiff's Administrative Tort Claim on or about November 25, 2016. Plaintiff has therefore exhausted all available administrative remedies and timely filed the instant action.

9. This Court has jurisdiction over Plaintiff's APA claim pursuant to 5 U. S. C. §702, et seq. The Department of Homeland Security and ICE have taken final agency action contrary to the U. S. Constitution, and in excess of statutory authority including the Immigration and Nationality Act, 8 U. S. C. §§1101, et seq.

10. Venue is proper in this District pursuant to 28 U.S.C. § 1402(b) because Plaintiff resides within the Central District of California and because the acts or omissions giving rise to Plaintiff's claims occurred within this judicial District.

PARTIES

11. Plaintiff Gregorio Garcia-Valle, is a forty-three (43) year old male, married to a U. S. citizen and has three (3) U. S. citizen children. Plaintiff is a lawful permanent resident of the United States and has been so since December 21, 1999.

12. Defendant United States of America is the appropriate defendant under the Federal Tort Claims Act.

13. Defendant U. S. Department of Homeland Security (DHS) is a federal agency under the Executive Branch of the United States Government and is charged with administering and enforcing the nation's immigration laws.

14. Defendant U. S. Immigration and Customs Enforcement is an investigative agency within DHS and is responsible for enforcing federal immigration laws.

1 15. Defendant Thomas Homan, is, on information and belief, the Acting Director of
2 ICE. Director Homan is responsible for supervising and implementing all ICE policies and
3 programs.

4 16. Defendant Elaine C. Duke is the Acting Secretary of the Department of Homeland
5 Security. ICE, Customs and Border Protection and USCIS are DHS agency components. As
6 head of DHS, Secretary Duke has authority over all DHS policies, procedures and practices
7 related to the agency's immigration enforcement functions.

8 17. The Immigration Customs and Enforcement ("ICE") is a federal agency of the
9 United States of America and exists under the Constitution of the United States of America and
10 laws enacted by the United States Congress. ICE was at all times relevant herein an agency of
11 the United States Department of Homeland Security, organized and existing under the laws of
12 the United States. The United States is vicariously liable for the misconduct of its agents and
13 employees, and is directly liable for failure to supervise employees properly, failure to properly
14 train employees and failure to implement sufficient procedures to guard against torts that
15 occurred in this case.

16 18. All ICE officers involved in Plaintiff's detention, civil prosecution, and removal
17 (collectively "ICE officers") were at all times relevant to this Complaint employed by DHS, an
18 executive agency of the United States.

19 19. At all times relevant to this Complaint, ICE officers were acting within the scope
20 and course of their employment with ICE.

21 20. At all times relevant to this Complaint, ICE officers were acting as investigative
22 or law enforcement officers.

23 21. Defendants Does 1-100, (hereinafter "Doe defendants") are and were at all times
24 relevant to this Complaint, law enforcement and/or investigative officers employed by the
25 Department of Homeland Security (DHS), Immigration and Customs Enforcement ("ICE"),
26 Customs and Border Protection, an agency of the United States of America, who were involved
27 with the arrest, detention, prosecution and removal of Plaintiff from the United States, including
28 their having refused re-entry based on non-existent removal orders. The Doe defendants are sued
in their official and individual capacities under fictitious names because their true identities are
unknown to plaintiff at this time. When plaintiff ascertains the identity of the Doe defendants, he
will amend this Complaint accordingly.

22. At all times relevant to this Complaint, the Doe defendants were acting within the scope and course of their employment with ICE and the Department of Homeland Security.

23. At all times relevant to this Complaint, the Doe defendants were acting as investigative or law enforcement officers.

24. At all times relevant to this Complaint, the Doe defendants acted in concert and conspiracy and were jointly and severally responsible for the harms caused to plaintiff.

FACTUAL ALLEGATIONS

25. Plaintiff Gregorio Garcia-Valle was born in Mexico on May 9, 1970.

26. On or about December 21, 1999, Plaintiff was admitted as a lawful permanent resident of the United States and continued to maintain his lawful residency without interruption, but for the government's illegal actions as alleged herein.

27. In or about sometime in July 2008, Plaintiff was placed in removal proceedings and initially charged with removability under 8 U.S.C. § 1227(a)(2)(E)(i) of the Act. The removability charge was withdrawn and a modified charge was filed.

28. As a lawful permanent resident with lengthy years in the United States, with immediate relatives who are lawful permanent residents and/or United States citizens, and without criminal misconduct that would result in a statutory bar, Plaintiff was eligible for multiple forms of relief from removal, which he sought in the form of adjustment of status to lawful permanent resident under 8 U.S.C. § 1225, and cancellation of removal under 8 U.S.C. § 1229b(a). Plaintiff was represented by counsel at all times relevant herein, and specifically throughout the removal proceedings initiated in 2008 through their termination in December 2016.

29. During the period from July 2008 to February 2014, Plaintiff had appeared at all hearings before the Immigration Court and was represented by counsel.

30. On or about October 4, 2013, Plaintiff was scheduled to appear before the Immigration Court. As a result of the federal government shutdown, the hearing was cancelled without a new hearing date.

31. On or about December 10, 2013, Plaintiff was ordered removed, *in absentia*. An *in absentia* removal order does not reach the merits any of the applications for relief pending before the Immigration Court. Neither Plaintiff nor his counsel had received notice of the

1 rescheduled hearing date, and consequently neither plaintiff or counsel appeared before the Court
2 on that date.

3 32. On or about December 13, 2013, upon receipt of the notice of the *in absentia*
4 order of removal, Plaintiff, through his counsel, filed a motion to re-open proceedings on the
5 grounds that the entry of the *in absentia* removal order was unlawful in the absence of receipt of
6 proper notice by Plaintiff or his counsel. On the same date, December 13, 2013, the Office of
7 Chief Counsel, DHS/ICE, was served with a copy of said motion. Upon the filing of the motion
8 to reopen, involving an *in absentia* order of removal, a stay of removal issues by operation of
law pursuant to 8 C.F.R. § 1003.23(b)(4)(ii).

9 33. Nonetheless, on or about February 6, 2014, several law enforcement officers from
10 the Department of Homeland Security, Immigration and Customs Enforcement, [DHS/ICE]
11 Fugitive Operations Unit, Santa Ana office, descended upon Plaintiff at his workplace in Chino,
12 California, where he had been employed for several years, detained and arrested Plaintiff, in the
13 presence of his supervisors, managers and co-workers and transported him to the field office in
14 Santa Ana, California. This, despite Plaintiff's claims that he, in fact, had a pending matter
15 before the Immigration Court. Plaintiff offered to provide documentation, but the officers
16 blatantly refused to allow Plaintiff to provide them with this evidence. Plaintiff's urged the
officers to contact his attorney who could corroborate his claim to no avail.

17 34. Upon arrival at the Santa Ana field office, on the same date of February 6, 2014,
18 plaintiff continued to assert that there was a matter pending before the Immigration Court, and he
19 requested that the officer contact his attorney. The officer declined to do so. Plaintiff was able to
20 contact his spouse, who in turn contacted counsel. Plaintiff's immigration attorney contacted
21 one of the officers at the Santa Ana field office and informed him that a motion to reopen had
22 been filed, and that an automatic stay of removal issued by operation of law, preventing
23 plaintiff's removal from the United States. Notwithstanding counsel's representation, Plaintiff
was deported to Mexico that same afternoon.

24 35. Upon information and belief, DHS/ICE has an electronic system in place which
25 receives notifications from the Office of Chief Counsel when an order of removal has been
26 entered by the Immigration Court, and/or when a motion to reopen has been filed which triggers
27 a stay of removal.

1 36. On December 13, 2013, the Office of Chief Counsel, DHS/ICE, was served with a
2 motion to reopen proceedings after an *in absentia* order of removal. Upon information and
3 belief, on that date, officers of the Fugitive Operations Unit, DHS/ICE, were notified that a
4 motion to reopen proceedings, after an *in absentia* order of removal, was filed by plaintiff
5 challenging the legality of the *in absentia* order of removal, which triggered a stay of removal
6 by operation of law, and that plaintiff could not be legally removed from the United States.
7 Nevertheless plaintiff was so removed to Mexico on or about February 6, 2014.

8 37. After Plaintiff was removed, he, along with about thirty (30) other detainees were
9 dumped off in the rain in Tijuana, Baja California, Mexico, without any money to call anyone
10 and without any identification which had been taken from Plaintiff at the time of his arrest and
11 not returned by the officers.

12 38. On or about February 11, 2014, Plaintiff was fired from his long-time
13 employment and lost all attendant benefits, including his seniority, medical benefits for his minor
14 United States children and spouse, as well as other benefits to which he was entitled, but for
15 Defendant's negligence and wrongful deportation.

16 39. On or about February 15, 2014, Plaintiff was finally able to reach relatives in
17 Aquascalientes, Mexico, where he stayed until his return to the United States could be arranged.

18 40. The Immigration Court found the assertion of lack of notice by Plaintiff and his
19 counsel to be meritorious and formally reopened the removal proceedings on or about March 15,
20 2014. There was no opposition from the Office of Chief Counsel, DHS/ICE.

21 41. On or about April 3, 2014, that Plaintiff was informed that in fact, he should have
22 never been arrested, much less deported. DHS/ICE admitted that they had illegally arrested and
23 wrongfully deported Plaintiff and agreed to make arrangements for his immediate return to the
24 United States.

25 42. Despite this agreement, on April 7, 2014, and upon Plaintiff's presenting himself
26 at the international border for inspection and lawful return to the United States, as arranged by
27 the Office of Chief Counsel, DHS/ICE, Plaintiff was taken into DHS/ICE custody and
28 transported to its detention facility in Adelanto, California, where he was forced to remain in
custody for at least another 30 days until an Immigration Judge ordered his released on bond.

 43. On or about May 8, 2014, Plaintiff was finally released from the custody of
DHS/ICE in Adelanto, CA. and able to reunite with his family.

1 44. After multiple subsequent hearings, the Court order removal proceedings
2 terminated on or about December, 2016.

3 45. Based on information and belief, and the facts as set forth hereinabove, Plaintiff
4 alleges that the derogatory and false information continues to exist in the federal agency
5 databases and has not been purged, to his detriment and that of his immediate family, all who are
6 U. S. citizens, and of future and imminent risk of arrest, detention, prosecution, deportation and
7 wrongful denial of any benefits for which he may be eligible as a lawful permanent resident of
8 the United States, including international travel and any application for U. S. citizenship.

9 46. Plaintiff has suffered significant emotional distress and economic hardship, as a
10 result of Defendants illegal and wrongful deportation of him.

11 47. Throughout the period that plaintiff was forced to remain in Mexico and unable to
12 return to the United States, as a result of the Defendants' actions, Defendants knew or should
13 have known that they had acted unlawfully in deporting plaintiff and knew or should have
14 known that they had brought about plaintiff's wrongful removal from the United States.

15 48. Since his return to the United States, Plaintiff continues to reside with his United
16 States citizen children and spouse as a lawful permanent resident.

17 49. As a result of Plaintiff's unlawful deportation, he was separated from his three
18 U.S. citizen children and United States citizen wife.

19 50. While in Mexico, plaintiff feared that he would never be able to return to the
20 United States and that he would be permanently separated from his family.

21 51. Plaintiff suffered significant financial harm as he was fired from his job due to his
22 illegal and wrongful deportation.

23 52. Due to plaintiff's inability to provide financially for his wife and children,
24 plaintiff feared greatly for the economic and physical security of his family, all who are United
25 States citizens, which caused plaintiff emotional distress.

26 53. As a result of his unlawful deportation, plaintiff suffered physical symptoms,
27 including difficulty sleeping, persistent headaches, and emotional distress.

28 54. Plaintiff's damages in the areas of physical injury, emotional distress, lost liberty
and financial losses, as described above, were the direct and proximate result of the conduct of
the named and Doe defendants.

1 65. Under the Federal Tort Claims Act, Defendant United States of America is liable
2 for these actions.

3 **Count III**

4 **Federal Tort Claims Act – Intentional Infliction of Emotional Distress**

5 66. The conduct of Defendants, and each of them, in acting to deport plaintiff, by
6 willfully misrepresenting his immigration status and illegally excluding him by preventing
7 plaintiff from returning to the United States, and thereafter, detaining him long after Defendants
8 agreed to arrange his return when they realized their illegal actions when they deported him –
9 notwithstanding his lawful status as a permanent resident of the United States and without a
removal order, was outrageous and extreme.

10 67. Defendants, and each of them, acted intentionally or in deliberate disregard of
11 plaintiff's emotional distress.

12 68. Plaintiff suffered severe emotional distress as a direct and proximate result of the
13 actions of Defendants and each of them.

14 69. The actions of the Defendants, and each of them, constitute the tort of intentional
15 infliction of emotional distress under the laws of the State of California.

16 70. Under the Federal Tort Claims Act, Defendant United States of America is liable
17 for these actions.

18 **Count IV**

19 **Federal Tort Claims Act – Negligent Infliction of Emotional Distress**

20 71. The Defendants, and each of them, as outlined above, owed plaintiff a duty of
21 care, breached that duty, and caused plaintiff to suffer severe emotional distress, which was the
22 direct and proximate result of defendants' breach of duty.

23 72. The actions of the Defendants, and each of them, constitute the tort of negligent
24 infliction of emotional distress under the laws of the State of California.

25 73. Under the Federal Tort Claims Act, Defendant United States of America is liable
26 for these actions.

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Count V

Federal Tort Claims Act – Malicious Prosecution/Malicious Use of Process

74. The Defendants, and each of them, by virtue of their actions to deport plaintiff and prevent plaintiff from returning to the United States, instituted illegal proceedings against plaintiff.

75. Because there was an automatic stay of removal, there was no legal cause to justify Plaintiff's removal by Defendants, and each of them, and Defendants' actions were carried out with malice.

76. Because the December 10, 2013, removal order was unlawful, and there was no legal cause to justify plaintiff's deportation and removal from the United States on February 5, 2014, nor at any time thereafter, by Defendants, and each of them, - Defendants' actions were carried out with malice.

77. The Department of Homeland Security's granting Plaintiff permission to re-enter the United States, termination and/or cancellation of any arguable removal order, and thereafter issuing a new Permanent Resident Card is a favorable termination of the proceedings brought against Plaintiff.

78. As a direct and proximate result of the actions of Defendants, and each of them, plaintiff was deprived of his liberty in that he was expelled from the United States, and his return was prohibited .

79. The actions of the Defendants, and each of them, constitute the tort of malicious prosecution and/or malicious use of process under the laws of the State of California.

80. Under the Federal Tort Claims Act, Defendant United States of America is liable for these actions.

Count VI

Administrative Procedure Act-Agency Action Contrary to Law

81. All previous paragraphs are incorporated as though fully set forth herein.

82. The actions of Defendants DHS, ICE, Homan and Duke, constitute final agency action, contrary to law. 5 U. S. C. §706 (2) (A). Specifically, despite the fact that Defendants have agreed to retrospective relief for DHS/ICE's illegal deportation of Plaintiff- in the form of admitting the automatic stay preventing removal and finally permitting him to re-enter-they have

1 failed to address the need for prospective relief including a search and purge of DHS and all
2 federal agency databases.

3 83. DHS/ICE's actions in arresting, detaining, and deporting Plaintiff were unlawful
4 and violated the Immigration and Nationality Act, the U. S. Constitution and the APA.

5 84. Attendant to DHS/ICE's unlawful actions are entries into DHS and other
6 databases falsely and maliciously claiming Plaintiff was subject to a removal order that had not
7 been automatically stayed and was deportable by the United States.

8 85. Upon information and belief, the residual data associated with these entries
9 remains uncorrected within the DHS and other agency databases.

10 86. As a consequence of this residual erroneous data entered in violation of law,
11 Plaintiff is suffering ongoing, concrete harm, including potential of being arrested, detained,
12 prosecuted and deported based on false information generated by the United States government.

13 87. Plaintiff is within the zone of interests of the Immigration and Nationality Act
14 sought to protect him and his family, by limiting the authority of the U. S immigration officials
15 to arrest, detain and deport lawful permanent residents who are not subject to a removal order
16 and/or for which a stay of removal has been granted or issued, by operation of law or otherwise.

17 88. No administrative remedy is available to Plaintiff for the violation of his right to
18 be free from residual effects of his unlawful deportation. In the alternative, any such
19 administrative remedy, if it does exists, would be futile.

20 89. No other remedy exists at law that would provide Plaintiff with the ability to
21 obtain a judicial order for DHS and ICE to search and purge agency databases of derogatory ,
22 inaccurate and false information.

23 **Wherefore**, Plaintiff respectfully requests the following relief:

24 A. A declaration that Plaintiff was subjected to malicious prosecution, falsely imprisonment,
25 negligence, intentional and/or negligent infliction of emotional distress, at the hands of the
26 United States government, as a result of his wrongful deportation/illegal exclusion from the
27 United States, in violation of the Federal Tort Claims Act;

28 B. Nominal and Compensatory damages for the injuries Plaintiff has suffered
as a result of his malicious prosecution, false imprisonment, negligence and intentional and
negligent infliction of emotional distress and wrongful deportation/unlawful exclusion from the

1 United States as a result of the illegal actions of the United States government and its' agents- in
2 the amount of \$1, 500,000.00;

3 C. A declaration that Defendants have violated Plaintiff's rights under the
4 Administrative Procedure Act by failing to search, correct and purge all derogatory and false
5 information relating to Plaintiff contained in all federal agency databases , as a result of the
6 initial wrongful deportation beginning on or about February 5, 2014;

7 D. A permanent injunction requiring Defendants to search all DHS/ICE databases and all
8 other federal agency databases, to correct all derogatory and false information pertaining to
9 Plaintiff contained therein as a result of their wrongful deportation/illegal exclusion of Plaintiff;

10 E. Reasonable attorneys' fees and costs pursuant to the Equal Access to Justice Act;

11 F. Pre-judgment interest on any award of damages to the extent permitted by law; and

12 G. Such other and further relief as may appear just and appropriate.

13 **PLAINTIFF HEREBY AND RESPECTFULLY DEMANDS A JURY TRIAL**

14 Dated: December 6, 2017

Respectfully submitted:

15 /s/ Rita Morales

Rita M. Morales, Esq. (Cal SBN 127115)

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19 **ATTORNEYS FOR PLAINTIFF GREGORIO GARCIA-**
20 **VALLE**

21 ***Certification of Counsel for Plaintiff***

22 I hereby certify that the matter in controversy is not the subject of any other
23 court, arbitration or administrative proceeding.
24

25 /s/ Rita Morales

26 Rita M. Morales, Esq.
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CERTIFICATE OF SERVICE

I hereby certify that on December 8, 2017, I electronically filed the foregoing document using the CM/ECF system, which will automatically send notification of this filing to all counsel of record.

s/ Rita Morales, Esq.

Rita Morales

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